

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 321**

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**Introduced by Senator Benoit**

February 25, 2009

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An act to amend ~~Sections 53753 and 53755~~ *Section 53753* of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 321, as amended, Benoit. Local government: ~~assessment and fees assessments~~: election requirements.

(1) Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution.

Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments, fees, and charges by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution.

~~This bill would limit the information an agency is required to provide in a notice by mail to the record owner of each identified parcel prior to levying the assessment. The~~ *This bill would prescribe other requirements for the tabulation of ballots if an agency uses agency personnel or a vendor, and for the availability and relating to the ballot envelope, the tabulation of ballots, and the preservation of ballots to the public as disclosable public records. By creating new requirements*

for property assessments conducted by counties and cities, the bill would impose a state-mandated local program.

~~With respect to a proposed increase of an existing fee or charge for a property-related service, if an election is required pursuant to existing law, this bill would impose new requirements regarding the conduct of the election.~~

~~By adding new duties to the local officials regarding these fees or charges, this bill would impose a state-mandated local program.~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 53753 of the Government Code is  
2 amended to read:

3 53753. (a) The notice, protest, and hearing requirements  
4 imposed by this section supersede any statutory provisions  
5 applicable to the levy of a new or increased assessment that is in  
6 existence on the effective date of this section, whether or not that  
7 provision is in conflict with this article. Any agency that complies  
8 with the notice, protest, and hearing requirements of this section  
9 shall not be required to comply with any other statutory notice,  
10 protest, and hearing requirements that would otherwise be  
11 applicable to the levy of a new or increased assessment, with the  
12 exception of Division 4.5 (commencing with Section 3100) of the  
13 Streets and Highways Code. If the requirements of that division  
14 apply to the levy of a new or increased assessment, the levying  
15 agency shall comply with the notice, protest, and hearing  
16 requirements imposed by this section as well as with the  
17 requirements of that division.

18 (b) Prior to levying a new or increased assessment, or an existing  
19 assessment that is subject to the procedures and approval process  
20 set forth in Section 4 of Article XIII D of the California  
21 Constitution, an agency shall give notice by mail to the record  
22 owner of each identified parcel. Each notice shall include the total

1 amount of the proposed assessment chargeable to the entire district,  
2 the amount chargeable to the record owner's parcel, the duration  
3 of the payments, the reason for the assessment and the basis upon  
4 which the amount of the proposed assessment was calculated, and  
5 the date, time, and location of a public hearing on the proposed  
6 assessment. Each notice shall also include, in a conspicuous place  
7 thereon, a summary of the procedures for the completion, return,  
8 and tabulation of the assessment ballots required pursuant to  
9 subdivision (c), including a statement that the assessment shall not  
10 be imposed if the ballots submitted in opposition to the assessment  
11 exceed the ballots submitted in favor of the assessment, with ballots  
12 weighted according to the proportional financial obligation of the  
13 ~~affected property. Except for the information described in~~  
14 ~~subdivision (e), this subdivision, and the information required by~~  
15 ~~Section 4 of Article XIII D of the California Constitution, no other~~  
16 ~~information shall be included with the notice. An agency shall give~~  
17 ~~affected property. An agency shall give notice by mail at least 45~~  
18 ~~days prior to the date of the public hearing upon the proposed~~  
19 ~~assessment. On the face of the envelope mailed to the record owner,~~  
20 ~~in which the notice and ballot are enclosed, there shall appear in~~  
21 ~~substantially the following form in no smaller than 16-point bold~~  
22 ~~type: "OFFICIAL BALLOT ENCLOSED."~~

23 (c) Each notice given pursuant to subdivision (b) shall contain  
24 an assessment ballot that includes the agency's address for receipt  
25 of the ballot and a place where the person returning the assessment  
26 ballot may indicate his or her name, a reasonable identification of  
27 the parcel, and his or her support or opposition to the proposed  
28 assessment. Each assessment ballot shall be in a form that conceals  
29 its contents once it is sealed by the person submitting the  
30 assessment ballot. Each assessment ballot shall be signed and either  
31 mailed or otherwise delivered to the address indicated on the  
32 assessment ballot. Regardless of the method of delivery, all  
33 assessment ballots shall be received at the address indicated, or  
34 the site of the public testimony, in order to be included in the  
35 tabulation of a majority protest pursuant to subdivision (e).  
36 Assessment ballots shall remain sealed until the tabulation of  
37 ballots pursuant to subdivision (e) commences, provided that an  
38 assessment ballot may be submitted, or changed, or withdrawn by  
39 the person who submitted the ballot prior to the conclusion of the  
40 public testimony on the proposed assessment at the hearing

1 required pursuant to subdivision (d). An agency may provide an  
2 envelope for the return of the assessment ballot, provided that if  
3 the return envelope is opened by the agency prior to the tabulation  
4 of ballots pursuant to subdivision (e), the enclosed assessment  
5 ballot shall remain sealed as provided in this section.

6 (d) At the time, date, and place stated in the notice mailed  
7 pursuant to subdivision (b), the agency shall conduct a public  
8 hearing upon the proposed assessment. At the public hearing, the  
9 agency shall consider all objections or protests, if any, to the  
10 proposed assessment. At the public hearing, any person shall be  
11 permitted to present written or oral testimony. The public hearing  
12 may be continued from time to time.

13 (e) (1) At the conclusion of the public hearing conducted  
14 pursuant to subdivision (d), an impartial person designated by the  
15 agency who does not have a vested interest in the outcome of the  
16 proposed assessment shall tabulate the assessment ballots  
17 submitted, and not withdrawn, in support of or opposition to the  
18 ~~proposed assessment. In a city, the impartial person may include,~~  
19 ~~but is not limited to, the city clerk. If the agency uses agency~~  
20 ~~personnel for the ballot tabulation, or if the agency contracts with~~  
21 ~~a vendor for the ballot tabulation and the vendor or its affiliate~~  
22 ~~proposed assessment. For the purposes of this section, an impartial~~  
23 ~~person may include, but is not limited to, the clerk of the agency.~~  
24 ~~An impartial person does not include the person or entity that~~  
25 ~~participated in the research, design, engineering, public education,~~  
26 ~~or promotion of the assessment, then the assessment. The~~ ballots  
27 shall be unsealed and tabulated in public view at the conclusion  
28 of the hearing so as to permit all interested persons to meaningfully  
29 monitor the accuracy of the tabulation process. ~~The~~

30 (2) *The* governing body of the agency may, if necessary,  
31 continue the tabulation at a different time or location accessible  
32 to the public, provided the governing body announces the time  
33 and location at the hearing. The impartial person may use  
34 technological methods of tabulating the assessment ballots,  
35 including, but not limited to, punchcard or optically readable  
36 (bar-coded) assessment ballots. During and after the tabulation,  
37 the assessment ballots *and the information used to determine the*  
38 *weight of each ballot* shall be treated as disclosable public records,  
39 as defined in Section 6252, and equally available for inspection  
40 by the proponents and the opponents of the proposed assessment.

1 Any member of the public wishing to inspect and count assessment  
2 ballots shall also be given access, upon request, to the information  
3 needed to determine the correct weight for each ballot. The ballots  
4 *The ballots* shall be preserved for a minimum of two years, after  
5 which they may be destroyed as provided in Sections 26202, 34090,  
6 and 60201.

7 ~~In~~

8 (3) *In* the event that more than one of the record owners of an  
9 identified parcel submits an assessment ballot, the amount of the  
10 proposed assessment to be imposed upon the identified parcel shall  
11 be allocated to each ballot submitted in proportion to the respective  
12 record ownership interests or, if the ownership interests are not  
13 shown on the record, as established to the satisfaction of the agency  
14 by documentation provided by those record owners.

15 (2)

16 (4) A majority protest exists if the assessment ballots submitted,  
17 and not withdrawn, in opposition to the proposed assessment  
18 exceed the assessment ballots submitted, and not withdrawn, in  
19 its favor, weighting those assessment ballots by the amount of the  
20 proposed assessment to be imposed upon the identified parcel for  
21 which each assessment ballot was submitted.

22 (3)

23 (5) If there is a majority protest against the imposition of a new  
24 assessment, or the extension of an existing assessment, or an  
25 increase in an existing assessment, the agency shall not impose,  
26 extend, or increase the assessment.

27 (4)

28 (6) The majority protest proceedings described in this  
29 subdivision shall not constitute an election or voting for purposes  
30 of Article II of the California Constitution or of the Elections Code.

31 ~~SEC. 2. Section 53755 of the Government Code is amended~~  
32 ~~to read:~~

33 ~~53755. (a) (1) The notice required by paragraph (1) of~~  
34 ~~subdivision (a) of Section 6 of Article XIII D of the California~~  
35 ~~Constitution of a proposed increase of an existing fee or charge~~  
36 ~~for a property-related service being provided to a parcel may be~~  
37 ~~given by including it in the agency's regular billing statement for~~  
38 ~~the fee or charge or by any other mailing by the agency to the~~  
39 ~~address to which the agency customarily mails the billing statement~~  
40 ~~for the fee or charge.~~

~~(2) The notice required by paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution of a proposed new fee or charge may be given in the manner authorized for notice of an increase of a fee or charge if the agency is currently providing an existing property-related service to the address.~~

~~(3) If the agency desires to preserve any authority it may have to record or enforce a lien on the parcel to which service is provided, the agency shall also mail notice to the recordowner's address shown on the last equalized assessment roll if that address is different than the billing or service address.~~

~~(b) One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to a proposed new or increased fee or charge subject to the requirements of Section 6 of Article XIII D of the California Constitution.~~

~~(c) Any agency that bills, collects, and remits a fee or charge on behalf of another agency may provide the notice required by Section 6 of Article XIII D of the California Constitution on behalf of the other agency.~~

~~(d) If the fee or charge requires an election pursuant to subdivision (e) of Section 6 of Article XIII D of the California~~

~~Constitution, the election shall be conducted by the elections official on an established election date pursuant to Section 1000 of the Elections Code or, in the case of a mailed ballot election, Section 1500 of the Elections Code. The provisions of the Elections Code shall govern elections under this section, to the extent they do not conflict with this section or Section 6 of Article XIII D of the California Constitution. If the agency chooses to limit the election to the owners of the property subject to the fee or charge, the election shall be conducted by mailed ballot, and the agency shall deliver to the elections official, by the date and in the format requested by the official, a list of the property owners entitled to vote in the election, and the addresses to which the agency mails their bills. If the agency does not mail bills, then the agency shall provide the addresses to which the property tax bills are mailed. There shall be only one ballot per parcel and the ballots shall not be weighted.~~

~~SEC. 3.~~

~~SEC. 2.~~ No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

- 1 a local agency or school district has the authority to levy service
- 2 charges, fees, or assessments sufficient to pay for the program or
- 3 level of service mandated by this act, within the meaning of Section
- 4 17556 of the Government Code.

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